

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., MUNICIPAL )  
CONSTRUCTION EQUIPMENT )  
OPERATORS' LABOR COUNCIL, et al. )  
 )  
Relators )  
 )  
vs. )  
 )  
CITY OF CLEVELAND, et al. )  
 )  
Respondents )

CASE NO. 2006-2056

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MOTION TO STRIKE RESPONDENTS'  
NOTICE OF COMPLIANCE WITH ORDER

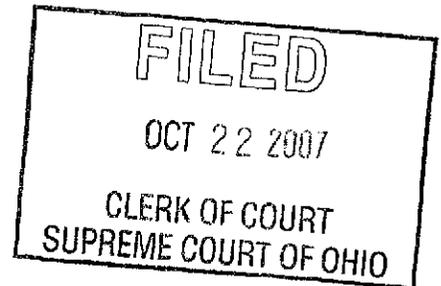
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Stewart D. Roll (0038004)  
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**COUNSEL FOR RESPONDENTS**



Relators move this Court for an Order striking Respondents' October 18, 2007 Notice of Compliance with Order because it is false. Respondents have not complied with this Court's August 15, 2007 Judgment Entry and Writs of Mandamus by: (1) only paying 17 and promising to pay 19 of the 72 persons identified by Relators as construction-equipment operators and master mechanics employed by Cleveland during the period of May 1, 1994 - February 14, 2005, and (2) because the payments made by Cleveland shorted the recipients identified in the email attached as Exhibit "A" to this Motion to Strike.

Affidavits submitted by Relators to this Court in support of their pending motions to require Respondents to show cause, and for sanctions, evidence that Respondents have only paid 17 and promised to pay 19 of the 72 persons identified by Relators as construction-equipment operators and master mechanics employed by Cleveland during the period of May 1, 1994 - February 14, 2005. This Court's Judgment Entry and Writs of Mandamus clearly require Respondents to "pay the city's construction-equipment operators and master mechanics the difference between the prevailing wage rates and the lower rates they were paid for the period of May 1, 1994 - February 14, 2005 ... ." Since those persons include the *identified but unpaid* construction-equipment operators and master mechanics employed by Cleveland during this period of time, it is clear that Cleveland's Notice of Compliance is false and a fraud upon this Court. That Notice of Compliance is further evidence of Respondents' contempt for this Court, and warrants issuance of the requested order to show cause and for sanctions.

The email attached as Exhibit "A" to this Motion to Strike advises Respondents that they have short paid those Relators who Respondents chose to pay. Although Respondents' attorney indicated a desire in her email to resolve this short payment without the need for judicial

intervention, she has failed to agree when discussions in that regard might occur. That failure suggests the need for judicial intervention, and is further evidence of the Respondents' false advice that they have complied with this Court's August 15, 2007 Judgment Entry and Writs of Mandamus.

Respectfully submitted,



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**STEWART D. ROLL (Reg. #0038004)**  
*Representing Individual Relators and  
the Municipal Construction Equipment  
Operators' Labor Council*

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion to Strike Respondents' Notice of Compliance with Order has been sent to the following via regular U.S. Mail on this 19<sup>th</sup> day of October, 2007.

Lindsey Williams, Assistant Attorney General  
Constitutional Office Section  
30 E. Broad Street, 17th Floor  
Columbus, OH 43215-3428

Robert J. Triozzi, Esq.  
Theodora M. Monegan, Esq.  
William Sweeney, Esq.  
City of Cleveland, Department of Law  
601 Lakeside Avenue, Room 106  
Cleveland, OH 44114-1077



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**STEWART D. ROLL (Reg. #0038004)**  
*Representing Individual Relators and  
the Municipal Construction Equipment  
Operators' Labor Council*

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**From:** Stewart D. Roll [sdani@msn.com]  
**Sent:** Wednesday, October 17, 2007 3:52 PM  
**To:** 'Langhenry, Barbara'  
**Cc:** 'Triozzi, Robert'; 'Sweeney, William'; 'Monegan, Theodora'  
**Subject:** RE: Corrected Email - Underpayments due pursuant to Judgment issued in Supreme Court Case No. 2006-2056

Dear Ms. Langhenry:

Thank you. Please let me know this week when you propose to meet to discuss this situation.

Sincerely,  
Stewart D. Roll

**EXHIBIT "A"**

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**From:** Langhenry, Barbara [mailto:BLanghenry@city.cleveland.oh.us]

**Sent:** Wednesday, October 17, 2007 3:06 PM

**To:** Stewart D. Roll

**Cc:** Triozzi, Robert; Sweeney, William; Monegan, Theodora

**Subject:** RE: Corrected Email - Underpayments due pursuant to Judgment issued in Supreme Court Case No. 2006-2056

Mr. Roll:

Thank you for providing an explanation of why you believe that the City's calculation is incorrect. We need this information so that we may be better prepared to cooperatively resolve this matter in a meaningful way. The appropriate City personnel are reviewing your explanation now. I will be in a better position to tell you when we can meet after those personnel complete their review. Thank you.

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**From:** Stewart D. Roll [mailto:sdanl@msn.com]

**Sent:** Wednesday, October 17, 2007 2:44 PM

**To:** 'Langhenry, Barbara'

**Subject:** RE: Corrected Email - Underpayments due pursuant to Judgment Issued in Supreme Court Case No. 2006-2056

Dear Ms. Langhenry:

I understand that a significant % of the underpayment is due to Cleveland's erroneous deduction of a portion of the hourly wage, as defined by the subject judgment, for overtime hours. The shortfall is \$3.17 per hour for regular overtime and \$6.28 per hour for double overtime. When do you want to meet to review this information, and confirm these underpayments?

Sincerely,  
Stewart D. Roll

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**From:** Langhenry, Barbara [mailto:BLanghenry@city.cleveland.oh.us]

**Sent:** Monday, October 15, 2007 7:01 PM

**To:** Stewart D. Roll

**Cc:** rtriozzi@city.cleveland.oh.us; Sweeney, William

**Subject:** RE: Corrected Email - Underpayments due pursuant to Judgment issued in Supreme Court Case No. 2006-2056

Mr. Roll:

The City would like to resolve this matter cooperatively as well. However, before we agree to meet with the lawyer/CPA from your office, I would like more detailed information from you or that lawyer about why you believe that the City's calculation is incorrect.

Thank you.

Barbara Langhenry

**From:** Stewart D. Roll [mailto:sdanl@msn.com]

**Sent:** Saturday, October 13, 2007 5:34 AM

**To:** blanghenry@city.cleveland.oh.us

**Cc:** rtriozzi@city.cleveland.oh.us

**Subject:** Corrected Email - Underpayments due pursuant to Judgment issued in Supreme Court Case No. 2006-2056

----- Original Message -----

**From:** Stewart D. Roll

**To:** [blanghenry@city.clevelandoh.us](mailto:blanghenry@city.clevelandoh.us)

**Cc:** [rtriozzi@city.cleveland.oh.us](mailto:rtriozzi@city.cleveland.oh.us)

**Sent:** Saturday, October 13, 2007 5:26 AM

**Subject:** Underpayments due pursuant to Judgment issued in Supreme Court Case No. 2006-2056

Dear Ms. Langhenry:

Our review of the payments made by Cleveland pursuant the subject Judgment indicates the noted underpayments. It is my preference to try and resolve this problem by having the lawyer/CPA from our office who prepared our calculations meet with a person of Cleveland's choice to compare our data and calculations. Please let me know by return email on Monday, October 15, 2007 whether your clients want to proceed in this fashion.

<b>Relator</b>	<b>Cleveland Payment</b>	<b>Amount Due</b>	<b>Underpayment</b>
Louis Cipriano	\$40,736.48	\$46,0005.87	\$ 5,269.39
Santo Consolo	\$27,512.36	\$30,914.63	\$ 3,402.27
Lawrence Douglas	\$50,867.22	\$61,560.02	\$10,692.80
Michael Graley	\$62,976.43	\$67,609.03	\$ 4,632.60
John Jatsek	\$40,816.92	\$48,036.55	\$ 7,219.63
Anthony Mangano	\$15,257.68	\$23,012.83	\$ 7,755.15
Biagio Montagna	\$11,582.90	\$13,853.36	\$ 2,270.46
Brady Ried	\$55,184.87	\$64,566.85	\$ 9,381.98
Samuel Thomas	\$37,547.46	\$41,429.10	\$ 3,881.64
Milton Wright	\$68,322.65	\$68,725.79	\$ 403.14

Sincerely,  
Stewart D. Roll

10/17/2007